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SUBJECT: PIRATED GOODS DOMINATE NORTHERN THAI MARKETS

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Summary  
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¶1. With sales of licensed intellectual property dropping 50 percent so far this year, pirated goods are deepening their stronghold in the Chiang Mai and upper northern Thai markets. Risks remain low for merchants to engage in the piracy business; thus, the legal market for DVDs, CDs, and software is disappearing as legitimate merchants struggle to remain competitive. Production bases in Burma, legal complexities in Thailand, and growing but price-conscious demand limit the success of Thai law enforcement's good efforts to eradicate pirated products from the market. Legal reform within Thailand could allow for more efficient seizures of pirated goods and arrests of producers, raising the risks and costs of engaging in this illegal business. End Summary.

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Profits Outweigh Risks for Pirates  
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¶2. Selling pirated goods remains a profitable business for northern Thai merchants. Despite efforts among local law enforcement officials to supplant the pirated goods market in northern Thailand, sales continue to rise. In 2007, the total value of seized pirated products in Chiang Mai, Chiang Rai, Lamphun, and Lampang provinces - known collectively as Police Region 5 - was 112,900 USD. The Chief of the Crime and Investigation Center reported that the value of pirated products seized in Chiang Mai Province alone from January through March 2008 was over 45,000 USD (based on the value of the pirated rather than the legal product), already a third of the value seized in 2007 across the entirety of region 5.

¶3. While the potential for revenues grows with greater demand in the north, the risks of engaging in the pirated goods market remain low. Fines for convicted pirates range from 3,200 USD to 12,900 USD or six months to four years imprisonment. These penalties are risks seemingly worth taking, given that legal requirements for declaring a merchant guilty of piracy are so complex that such convictions are rare (see para 9). In addition, with the vast majority of piracy cases being solved with compensation payments outside of the Thai legal system, pirates can simply factor such payments into their cost structure, allowing them to revive and maintain their illegal businesses.

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The Disappearing Legal IP Market  
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¶4. Despite the Chiang Mai economy growing more sophisticated, access to legal and licensed intellectual property remains disturbingly low in local markets. In a series of interviews with local DVD, CD, and software merchants, we discovered that

purchasing legal IP products in Chiang Mai is nearly impossible.

A merchant from one of Chiang Mai's largest CD retailers said that "few legal shops remain in Chiang Mai." The merchant said many entrepreneurs will begin with a legitimate business; however, almost all will shift to selling pirated goods in order to remain competitive. According to one legal CD and DVD shop owner, sales volumes for his legal products dropped 50 percent in the first quarter of 2008. He attributes this to the ever-growing number of illegal shops and increasing demand for CDs and DVDs locally.

15. Our investigation revealed that the supply market for pirated products is widespread and complex. In the traditional pirated goods markets, such as Chiang Mai's Night Bazaar, street merchants serve as middlemen between the customers and the suppliers, who remain hidden in nearby buildings. Displaying only a catalog of DVDs and CDs to choose from, police cannot seize the pirated goods unless they locate the hidden supplier. Moreover, legal barriers such as difficulties in acquiring arrest warrants and court orders for seizures make merchants nearly invincible to law enforcement at their street-side stalls.

16. Aside from the traditional pirated goods markets, major retailers and seemingly legitimate businesses also sell pirated goods. We discovered that the licensed software market is non-existent in Chiang Mai. The major software and IT retailers of Chiang Mai - Sony Center, IT City, and iStudio - upload unlicensed software onto newly purchased computers to entice customers to buy the hardware. The sales clerk of the recently opened iStudio, a licensed reseller of Macintosh products, admitted that his store sells new computers pre-loaded with unlicensed Microsoft and other software not produced by Macintosh. All of these IT merchants said that their businesses cannot be competitive if they sold licensed or no pre-installed software. In the DVD and CD markets, even major retailers such as Tesco Lotus sold products that seemed to be pirated based on

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packaging and price (for example, DVDs costing \$.60). The sales clerk at Tesco Lotus said, however, that the goods are licensed but deeply reduced in price for clearance.

#### ----- Attacking Supply -----

17. The Special Force Subdivision of Police Region 5 is the primary local law enforcement body that seeks to reduce the supply of pirated goods in the market. The main objective of this group of police officers is to locate and seize pirated goods; without judicial intervention, the group is relatively powerless to arrest merchants. One of the Center's officers claimed that although piracy problems are widespread in Chiang Mai, "we can control it." In addition to these local efforts, the RTG's National IPR Suppression Commission surveys the Chiang Mai market two to three times a week and has undertaken 152 successful seizures so far this year.

18. Despite these efforts to attack supply within Thailand, the source of the supply chain remains untouched with much of the production of illegal products centering in Burma. Law enforcement officials told us that Burma is a manufacturing center for pirated products all the way down to the raw materials that produce the physical discs. Most of these discs are transported from Burma into Thailand as blank discs at the border point of Mae Sai/Tachilek in Chiang Rai province.

#### ----- Legal Complexities Limit Law Enforcement -----

19. Besides the challenge that production in Burma presents, Thailand's domestic legal system severely limits the power of law enforcement officials to eradicate the pirated goods market. Local police said that before an investigation and a raid can take place, the police need to secure a report from the IP

owner, a court order to investigate the suspected retailer, and an arrest warrant. The arrest warrant is the most difficult to acquire, as the courts tend to protect Thai business owners. By the time the police locate a pirated goods supplier, request the court's permission, and await the long process for court orders and arrest warrants, the pirated goods supplier has relocated to another secret location. In addition, because of the long and costly legal process, IP owners will most often reach a settlement with the pirated goods retailer outside of the legal system, leaving the merchant free to continue his business.

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Growing Demand  
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¶10. As a result of these complexities and the low level of risk to venders of pirated goods, demand for pirated goods continues to flourish. While income, education, and quality of life increase over time in Chiang Mai, so does the demand for entertainment and software. Youth is the base market for much of these goods; and with relatively low incomes, these consumers are highly price conscious. A local university student pointed out that while a legal VCD costs the equivalent of seven to ten USD (and is difficult to find), a pirated version is only two to three USD, a 70 percent savings. The ratio of legal and pirated CD prices is comparable, and the pirated products are of similar or superior quality when compared to the legitimate ones because of RTG censorship that might edit violence or sexual content or because of the lower quality of VCDs compared to DVDs. Meanwhile, the price of licensed software is so far beyond the unlicensed versions' prices that the market for legal software is nearly non-existent. Local police said that while suppression of pirated goods helps, the significant price difference makes demand the driving force behind the dominance of pirated goods.

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Comment  
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¶11. The resilience of the pirated goods market in Chiang Mai comes from production in Burma instead of Thailand, a long and costly legal system that limits suppression by law enforcement, and an economic environment that allows demand to flourish. Thailand seems to have made significant progress in preparing its law enforcement bodies to combat piracy, but these officers still lack the legal instruments to conduct their work efficiently and more frequently. While IP owners will remain targets as the cause of the market's sustainability because legal goods are so highly priced, Thailand could still advance its IPR regime with legal reforms making engagement in the pirated goods market more costly for local merchants; namely, by making the process for arrest warrants and court orders for seizures more efficient for law enforcement officers.

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¶12. This cable was coordinated with Embassies Bangkok and Rangoon.  
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